

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #10	CCRB Case #: 201604524	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/13/2016 9:25 PM	Location of Incident: § 87(2)(b)	Precinct: 47	18 Mo. SOL 10/13/2017	EO SOL 10/13/2017	
Date/Time CV Reported Wed, 04/13/2016 11:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/24/2016 4:31 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Stanley Baez	15980	957351	047 PCT
2. POM Robert Hoey	19196	947081	047 PCT
3. An officer			
4. SGT Eric Florio	00997	943245	047 PCT
5. DTS Jeremiah Williams	5408	927673	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Yesenia Lopez	25888	948242	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Hoey	Force: Police Officer Robert Hoey used physical force against § 87(2)(b)	
B.SGT Eric Florio	Abuse: Sergeant Eric Florio entered § 87(2)(b) in the Bronx.	
C.POM Stanley Baez	Abuse: Police Officer Stanley Baez entered § 87(2)(b) in the Bronx.	
D.POM Robert Hoey	Abuse: Police Officer Robert Hoey entered § 87(2)(b) in the Bronx.	
E.DTS Jeremiah Williams	Abuse: Detective Jeremiah Williams entered § 87(2)(b) in the Bronx.	
F.SGT Eric Florio	Abuse: Sergeant Eric Florio authorized the entry of § 87(2)(b) in the Bronx.	
G. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	

Case Summary

On April 13, 2016, § 87(2)(b) filed the following complaint on behalf of his friend § 87(2)(b) with IAB. On May 24, 2016, this complaint was received at the CCRB via referral number 16-13850. On April 13, 2016, at approximately 9:25 p.m., § 87(2)(b) was inside § 87(2)(b) in the Bronx. There was a party inside the apartment, but § 87(2)(b) denied knowing the names of anyone present, including § 87(2)(b). § 87(2)(b) was intoxicated with alcohol and marijuana. § 87(2)(b) stepped out of the apartment into the hallway to get some fresh air, and saw officers identified by the investigation as Sergeant Eric Florio, Detective Jeremiah Williams, Police Officer Stanley Baez and Police Officer Robert Hoey, all of the 47th Precinct, in the building hallway. The officers were responding to a report of a shooting (**Board Review 1**). An officer whom § 87(2)(b) could not identify, but identified by the investigation as PO Hoey allegedly began to punch him without reason (**Allegation A**). § 87(2)(b) fell backward into the apartment, and was followed by Sgt. Florio, Det. Williams, PO Baez and PO Hoey (**Allegations B, C, D and E**). They attempted to handcuff § 87(2)(b) but were unsuccessful and exited the apartment. The officers set a perimeter around the apartment building. While at the rear of the building, Det. Williams and PO Baez witnessed § 87(2)(b) throw a handgun out of the window into the back yard. Sgt. Florio then requested that ESU enter the apartment to apprehend § 87(2)(b) (**Allegation F**). An unidentified ESU officer yelled, "Get the fuck on the ground." Before entering the apartment (**Allegation G**). § 87(2)(b) was arrested for criminal possession of a weapon. A search warrant was subsequently obtained to search the apartment. The next day, Sgt. Florio, Det. Williams and PO Hoey conducted the search, locating another firearm and narcotics inside the apartment. § 87(2)(b) was arrested for criminal possession of a weapon in the 2nd degree, criminal possession of a controlled substance in the 5th degree with intent to sell, as well as other charges (**Board Review 2**). § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

There was no video of the incident between § 87(2)(b) and the police officers.

On July 19, 2016, this complaint was closed by the board as Complainant Uncooperative and Victim Uncooperative after all contact attempts to § 87(2)(b) and § 87(2)(b) were exhausted without reciprocation. On January 4, 2017, the CCRB received a petition by § 87(2)(b) to re-open the case stating that he did not receive the contact letters that were sent to him. § 87(2)(b) was interviewed at Riker's Island on February 15, 2017, and admitted that he had received the letters that were sent to him, but he did not respond because he did not understand the letters. As a result of this delay, § 87(2)(b) was not interviewed until nine months after the CCRB received this case. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to the criminal charges against § 87(2)(b).
- An enquiry to the Office of the New York City Comptroller indicated that no notices of claim were filed for this incident.

- For the charges stemming from his arrest on April 13, 2016, § 87(2)(b) pleaded guilty to Criminal Possession of a Weapon in the 4th degree and was sentenced to 60 days of imprisonment on § 87(2)(b). § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b) (Board Review 3).
- § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first and only complaint filed by § 87(2)(b) (Board Review 4).
- Sgt. Florio has had 12 other complaints, involving 33 allegations pleaded against him in his ten year tenure at the NYPD. None of the allegations have been substantiated. Sgt. Florio has had two other allegations of entry and search of premises pleaded against him. Both of those allegations were closed as exonerated. § 87(2)(g)
- Det. Williams has had a total of 16 complaints involving 40 allegations made against him in his 16 year tenure at the NYPD.
- PO Hoey has had three other complaints involving seven allegations pleaded against him in his nine year tenure at the NYPD. None of the allegations have been substantiated and § 87(2)(g)
- This is the first and only complaint filed against PO Baez in his 2 year tenure at the NYPD.

Findings and Recommendations

Witnesses not interviewed

§ 87(2)(b) stated that he was at a house party, but did not know the names of any of the other attendants. Multiple contact attempts including five calls and three letters were sent to § 87(2)(b) who originally filed the complaint, but § 87(2)(b) was not responsive to any of the contacts. As a result, no witnesses could be interviewed.

Explanation of Subject Officer Identification

- § 87(2)(b) stated that he did not see which officer punched him and could not describe any of the officers in the hallway because it was dark. PO Hoey and other officers identified by the investigation stated that PO Hoey was closest to § 87(2)(b) and stated that he was first in physical contact with § 87(2)(b) § 87(2)(g)
- Sgt. Florio, Det. Williams, PO Baez and PO Hoey all admit to entering 1058 East 228th Street apartment 2 in the Bronx. § 87(2)(g)

- Sgt. Florio stated that he requested ESU to enter 1058 East 228th Street apartment 2 in the Bronx to apprehend § 87(2)(b) § 87(2)(g)
- § 87(2)(b) stated that an officer he could not see yelled from the other side of the door, “Get the fuck on the ground.” § 87(2)(g)

Allegation A – Force: Police Officer Robert Hoey used physical force against § 87(2)(b)

It remains in dispute whether PO Hoey punched § 87(2)(b) It is also in dispute whether § 87(2)(b) pushed PO Hoey first.

§ 87(2)(b) was inside § 87(2)(b) in the Bronx. § 87(2)(b) had drunk two cups of cognac and rum and smoked one rolled cigar of marijuana. § 87(2)(b) was intoxicated, but stated that he was still aware of his surroundings. § 87(2)(b) denied any knowledge of a shooting or hearing any gunshots. § 87(2)(b) decided to get some fresh air and opened the door to the apartment and stepped outside into the hallway. The hallway was dark, and § 87(2)(b) saw anywhere from five to ten officers whom he could not identify standing in the hallway. An officer § 87(2)(b) could not identify allegedly began to punch him in the face, while other officers grabbed him on various parts of his body. Officers he could not see were yelling, “Get down,” and “Put your hands behind your back.” § 87(2)(b) did not think that the individuals were police officers and so did not comply. He responded, “What do you mean get down? Who the fuck is you?” § 87(2)(b) stated that he flailed his arms in front of him in an attempt to fend off the officers who were grabbing him. § 87(2)(b) felt pain in his face, but did not claim to have suffered any injuries from being punched (**Board Review 5**).

PO Baez (**Board Review 6**) stated that he was on patrol when he heard gunshots in the direction of East 228th Street and Laconia Avenue. PO Baez went to the location and canvassed for evidence of the shooting. Sgt. Florio, Det. Williams and PO Hoey, who were field intelligence officers working at the 47th Precinct stationhouse, heard reports of the shooting on the radio, and walked the 1 block distance from the stationhouse to East 228th Street and Laconia Avenue. A large number of other police officers also responded to canvass for the shooting. Sgt. Florio, Det. Williams, PO Hoey and PO Baez all heard the sound of yelling and a commotion coming from inside § 87(2)(b), which had the front door open. Sgt. Florio, Det. Williams and PO Hoey, in their roles as field intelligence officers were familiar with the building because they had executed a search warrant in that building one year prior and recovered drugs and two guns. They also knew that occupants of that building are frequently arrested in the area for drug dealing, weapons possession and shootings. Sgt. Florio, Det. Williams, PO Baez and PO Hoey’s statements were consistent regarding what happened inside the building. They entered the building together through the open front door. They heard the yelling and commotion coming from the second floor and walked up the stairs. Sgt. Florio (**Board Review 7**) believed that the sounds of yelling could be related to a potential victim of the shooting and was concerned to locate any victim and render aid. The other three officers also shared that concern. Coincidentally, § 87(2)(b) opened the door and exited from the § 87(2)(b) apartment. Sgt. Florio, PO Hoey and Det. Williams recognized § 87(2)(b) from previous encounters, and

believed that § 87(2)(b) also recognized them. Sgt. Florio and PO Hoey heard § 87(2)(b) yell, “It’s the police!” to unseen individuals in the apartment. Before the officers issued any commands, PO Hoey, who was standing closest to § 87(2)(b) was pushed by § 87(2)(b) causing him to almost fall down the stairs, but was caught by PO Baez behind him. § 87(2)(b) then ran inside the apartment. Sgt. Florio, PO Hoey, Det. Williams and PO Baez all denied that any officer punched § 87(2)(b) in the hallway as § 87(2)(b) alleged.

§ 87(2)(g)

Allegation B – Abuse of Authority: Sergeant Eric Florio entered § 87(2)(b) in the Bronx.

Allegation C – Abuse of Authority: Police Officer Stanley Baez entered § 87(2)(b) in the Bronx.

Allegation D – Abuse of Authority: Police Officer Robert Hoey entered § 87(2)(b) in the Bronx.

Allegation E – Abuse of Authority: Detective Jeremiah Williams entered § 87(2)(b) in the Bronx.

It is not in dispute that police officers attempted to arrest § 87(2)(b) for assaulting PO Hoey while he was outside § 87(2)(b) in the Bronx. It is also not in dispute that § 87(2)(b) resisted attempts of the officers to handcuff him. It is also not in dispute that Sgt. Florio, PO Hoey, Det. Williams and PO Baez entered § 87(2)(b) immediately after § 87(2)(b) entered the apartment and attempted to arrest him.

As stated above, PO Baez responded to the corner of East 228th Street and Laconia Avenue after hearing gunshots in that direction during his foot patrol. Sgt. Florio, Det. Williams and PO Hoey, are field intelligence officers assigned to the 47th Precinct and responded to the location from the 47th Precinct stationhouse. All four officers began to canvass for signs of the shooting at the intersection when they heard yelling and a commotion coming from inside § 87(2)(b), a multi-unit apartment building that had its front door open. The three field intelligence officers were familiar with the building because they had executed a search warrant at that building one year prior and recovered guns. The four officers entered the building and heard yelling coming from the § 87(2)(b). They walked up to the § 87(2)(b), but did not knock on any apartment doors or enter any apartments initially. It is not in dispute that § 87(2)(b) exited § 87(2)(b) voluntarily. Sgt. Florio, Det. Williams and PO Hoey recognized § 87(2)(b) from previous encounters and believed that § 87(2)(b) recognized them too. PO Baez, who had no previous interaction with § 87(2)(b) did not recognize him. § 87(2)(b) claimed that officers assaulted him first, and that he flailed his arms at them in self-defense, while the officers all claimed that § 87(2)(b) yelled out a warning upon seeing the officers and that he then pushed PO Hoey, nearly causing him to fall down the stairs. At that point, the officers intended to arrest § 87(2)(b) for assaulting a police officer. § 87(2)(b) immediately fled inside the apartment, with officers following close behind. According to § 87(2)(b) he was standing outside of the apartment when officers attempted to apprehend him and he fell backward into the apartment with officers still attempting to grab him. The officers came inside the apartment along with him

and continued to attempt to grab and handcuff him there. According to Sgt. Florio and Det. Williams, it appeared § 87(2)(b) was pulling PO Hoey and PO Baez into the apartment and that they had to pull the two officers from § 87(2)(b) § 87(2)(g)

In United States v. Santana, 427 U.S. 38, 96 S. Ct. 2406, 49 L. Ed. 2d 300, (1976), (**Board Review 8**) the court held that a defendant standing in the threshold of her home, was in a public place, and given sufficient probable cause, a warrantless arrest in such a place would not violate the Fourth Amendment. The court also held that the defendant could not thwart the arrest by retreating inside a private residence since the police were in “hot pursuit.”

§ 87(2)(g)

Allegation F – Abuse of Authority: Sergeant Eric Florio authorized the entry and search of § 87(2)(b) in the Bronx.

It is not in dispute that Sgt. Florio, Det. Williams, PO Hoey and PO Baez were unable to handcuff § 87(2)(b) and retreated from the apartment. It is also not in dispute that at the direction of Sgt. Florio, officers of the Emergency Service Unit entered the apartment and handcuffed § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that after he fell inside the apartment, he was grappling with officers on the ground, the officers suddenly stood up and exited the apartment. All of the officers then exited the building. § 87(2)(b) stated he went downstairs to the building lobby and looked outside to see approximately 40 police officers outside. There was no communication between the officers outside and anyone in the building. § 87(2)(b) then returned to the apartment. § 87(2)(b) stated he watched the officers for approximately 30 minutes until approximately 12 police officers dressed in SWAT uniforms and equipment arrived. An officer whom § 87(2)(b) could not see yelled, “Get the fuck on the ground.” from outside of the apartment. § 87(2)(b) complied and yelled back that he had done so. The SWAT officers then entered the apartment and handcuffed him. § 87(2)(b) denied any knowledge of a gun inside the apartment.

PO Hoey and PO Baez both stated that they were wrestling for control of § 87(2)(b)'s arms, but § 87(2)(b) was punching them. Sgt. Florio and Det. Williams both stated that it appeared § 87(2)(b) was pulling PO Hoey and PO Baez into the apartment and that they had to pull the two officers free from § 87(2)(b). Sgt. Florio stated that he ordered Det. Williams, PO Hoey and PO Baez to retreat from the apartment after § 87(2)(b) resisted their attempts to handcuff

him and they were unable to subdue him. Sgt. Florio stated his decision to retreat was influenced by the confined environment of the apartment and because they suspected the presence of a firearm. The four officers exited the apartment and the building.

Det. Williams and PO Baez went to the rear of the building. PO Baez and Det. Williams both saw § 87(2)(b) stick his head out from a second floor window. A handgun was then thrown out of the same window, landing in the yard behind the building. Sgt. Florio and PO Hoey were at the front of the building along with numerous other officers and did not witness the gun being thrown out of the window, but were informed of it. The gun was guarded by an officer until evidence collection recovered it.

Sgt. Florio stated that he requested ESU enter the apartment to apprehend § 87(2)(b) since he considered § 87(2)(b) already under arrest for assaulting PO Hoey and PO Baez. Sgt. Florio stated that after ESU handcuffed and removed § 87(2)(b) the officers did not enter or search the apartment until the next day when a search warrant was obtained. During the execution of that search warrant, marijuana, cocaine and another gun were found in the apartment. **(Board Review 9)** § 87(2)(b)

In People v. Vernon B., 38 Misc. 3d 343, 954 N.Y.S.2d 835, 2012 N.Y. Misc. LEXIS 5253, 2012 NY Slip Op 22329 (2012) (Board Review 10) the court held that a limited intrusion was reasonable under the fourth amendment after a suspect was observed throwing a gun into the back yard of a house. In reaching its conclusion, the court considered five factors to determine whether exigent circumstances were present: 1) the degree of urgency involved and the amount of time necessary to obtain a warrant; 2) a reasonable belief that the contraband is about to be removed; 3) the possibility of danger to police officers guarding the site of the contraband while a search warrant is sought; 4) information indicating the possessors of the contraband are aware that the police are on their trail; 5) the ready destructibility of the contraband.

§ 87(2)(g)

Allegation G – Discourtesy: An officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that an officer whom he could not see yelled, “Get the fuck on the ground” from outside of the apartment. § 87(2)(b) complied, and informed officers that he had done so. The officers then entered the apartment and handcuffed him.

In PD v. Pichardo, (**Board Review 11**) the decision affirmed that officers’ use of discourteous language “in the context of a dynamic situation over which Respondent was still attempting to gain control.” was excusable.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 10

Investigator:	_____	<u>Simon Wang</u>	<u>09/21/17</u>
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date